

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Spitzer, Shawn D.

Art Unit: 3636

Serial No.:
10/647,992

Examiner: Garrett, Erika

Filed:
26 August 2003

For: UNIFORM SEAT COVER AND SEAT FASHIONED WITH SAME

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Mail Stop APPEAL BRIEF-PATENTS

SIR:

This Appeal Brief is submitted in response to the Notification of Non-Compliant Appeal Brief mailed 14 March 2007. A one-month period for reply was set up to and including 14 April 2007.

In response to appellant's appeal brief filed 01 May 2006, the Examiner in this case reopened prosecution and submitted a non-final Office Action, which was mailed on 13 July 2006, in which a shortened statutory period for response was set for 3 months, up to and including 13 October 2006.

Appellant hereby elects reinstatement of the appeal and consideration of this supplemental appeal brief. Appellant acknowledges that the rejections set forth in the 14 December 2005 Office Action have been withdrawn by the Examiner in view of the appeal brief filed 01 May 2006.

I. REAL PARTY IN INTEREST

All of the right, title and interest in and to the above-described Patent Application are owned by Appellant Shawn D. Spitzer, who is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF THE CLAIMS

1. Claims 1-23 were originally filed in this case. Claims 2 and 6-23 were canceled. Claim 1 was amended four times. Claims 3-5 were each amended once. Claims 1 and 3-5 are pending in this case.
2. A copy of claims 1 and 3-5, the claims on appeal, is provided in Claims Appendix A.
3. Claim 1 stands rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Bolewski, U.S. Patent DES. 365,958.
4. Claims 3-5 stand rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511.

IV. STATUS OF AMENDMENTS

No response to the final rejection mailed 14 December 2005 was mailed and no amendments to the specification or claims were proposed. No response to the non-final rejection mailed 13 July 2006 was mailed and no amendments to the specification or claims were proposed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1

The subject matter claimed in independent claim 1, on appeal, which is disclosed on pages 8-21 of Appellant's specification, consists of a seat 30 including a seat portion 31 and an attached seat back portion 32. (lines 9-10, page 8 of the specification in conjunction with FIG. 1). A top 21, having a lower end 43, is fitted over the seat back portion 32. (lines 8-9, page 8, line 5, page 11, and lines 1-4, page 13, of the specification in conjunction with FIGS. 1 and 4). A bottom 22, having a rearward end 53, is fitted over the seat portion 31. (lines 9-10, page 8, lines 12-14, page 11, and lines 1-4, page 13, of the specification in conjunction with FIGS. 1 and 4). An engagement assembly 92 is carried by one of the lower end 43 of the top 21 and the rearward end 53 of the bottom 22, and a complementary engagement assembly 93 is carried by the other of the lower end 43 of the top 21 and the rearward end 53 of the bottom 22. (lines 1-5, page 16, of the specification in conjunction with FIG. 5). The engagement assembly 92 is detachably engaged to the complementary engagement assembly 93 thereby detachably engaging the lower end 43 of the top 21 to the rearward end 53 of the bottom 22. (lines 1-5, page 16, of the specification in conjunction with FIG. 5). The top 21 supports first uniform adornment, and the

bottom 22 supports second uniform adornment, in which the first and second uniform adornments together form the top 21 and bottom 22 as an identifying uniform of a member of an organization. (line 4, page 10, to line 24, page 12, of the specification in conjunction with FIGS. 1-3).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claim 1 stands rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Bolewski, U.S. Patent DES. 265,958. The first issue to be resolved in this appeal is, therefore, whether claim 1 is patentable over Takamatsu, U.S. Patent 4,036,524, in view of Bolewski, U.S. Patent DES. 265,958.

Claims 3-5 stand rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511. The second issue to be resolved on appeal is, therefore, whether claims 3-5 are patentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511.

VII. ARGUMENT

Issue #1: Whether claim 1 is patentable over Takamatsu, U.S. Patent 4,036,524, in view of Bolewski, U.S. Patent DES. 265,958.

Claim 1 stands rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Bolewski, U.S. Patent DES. 265,958. Appellant respectfully traverses this rejection.

Independent claim 1

On page 2 of paper no. 20060705, the examiner states that Takamatsu shows the use of all the claimed invention but fails to show the use of the uniform adornment of the top and bottom that identifies a member of an organization. The examiner cites Bolewski for teaching the use of a top and bottom supporting uniform adornment that identifies a member of an organization, and concludes that it would have been obvious to modify the uniform top and bottom with adornment as taught by Bolewski, in order to show support and team spirit to the organization. Appellant disagrees.

Bolewski is a design patent directed to a cover for an automobile seat. The seat cover in Bolewski includes the

design consisting of a variety of markings, namely, 1) on the sides of the seatback the word BASKETBALL associated with indicia indicative of a basketball, 2) on the front of the seatback the word FOOTBALL associated with indicia indicative of a football helmet, 3) on the sides of the seat the word HOCKEY associated with indicia indicative of a hockey puck, 4) on the upper side of the seat indicia indicative of baseball bats and a baseball cap and a baseball, and 5) on the front end of the seat the word BASEBALL. The examiner alleges that the markings applied to the seat cover in Bolewski meets appellant's claim limitation of first and second uniform adornments together forming the top and bottom as an identifying uniform of a member of an organization. Appellant disagrees.

Appellant carefully claims that the top supports first uniform adornment, that the bottom supports second uniform adornment, and that the first and second uniform adornments together form the top and bottom as an identifying uniform of a member of an organization. The nature and character of appellant's claimed first and second indicia is carefully limited in that together they constitute the identifying uniform of a member of an organization, according to the principle of the claimed invention. In other words, the first indicia carried by the top and the second indicia carried by

the bottom must cooperate together to constitute the identifying uniform of a member of an organization. If the first indicia carried by the top and the second indicia carried by the bottom do not cooperate together to constitute the identifying uniform of a member of an organization, the limitations of appellant's claim 1 are not met.

The indicia incorporated with the seat cover in Bolewski do not together form the top and bottom as an identifying uniform of a member of an organization. Looking to Bolewski, the top of the seat cover is formed with the word BASKETBALL associated with indicia indicative of a basketball, and the word FOOTBALL associated with indicia indicative of a football helmet on the front. The bottom of the seat cover in Bolewski is formed with the word HOCKEY associated with indicia indicative of a hockey puck, markings indicative of baseball bats and a baseball cap and a baseball, and the word BASEBALL on the front end. The markings applied to the top of the seat cover in Bolewski identify the sports of football and basketball, and the markings applied to the bottom of the seat cover in Bolewski identify the sports of hockey and baseball. The subject matter of the markings on the top of the seat cover in Bolewski identify two different sports, which are altogether different from the two different sports identified

by the markings applied to the bottom of the seat cover in Bolewski.

How can markings applied to the top of the seat cover in Bolewski that identify the sports of football and basketball, and the markings applied to the bottom of the seat cover in Bolewski that identify the sports of hockey and baseball, cooperate together to form the top and bottom as an identifying uniform of a member of an organization? Bolewski and the arguments set forth in paper no. 20060705 provide no guidance as to how the markings applied to the top of the seat cover in Bolewski that identify the sports of football and basketball, and the markings applied to the bottom of the seat cover in Bolewski that identify the sports of hockey and baseball, can possibly cooperate together to form the top and bottom as an identifying uniform of a member of an organization. It is altogether unclear to appellant how the markings applied to the top of the seat cover in Bolewski that identify the sports of football and basketball, and the markings applied to the bottom of the seat cover in Bolewski that identify the sports of hockey and baseball, can possibly cooperate together to form the top and bottom as an identifying uniform of a member of an organization. It is appellant's contention that the markings applied to the top of the seat cover in Bolewski only identify the sports of

football and basketball, that the markings applied to the bottom of the seat cover in Bolewski only identify the sports of hockey and baseball, and that the markings of the top and bottom in Bolewski are quite independent from one another and do not in any way cooperate together to form the top and bottom as an identifying uniform of a member of an organization.

Bolewski teaches a seat cover that is configured merely with a variety of markings that in no way constitute a uniform as claimed by appellant, e.g., markings that in no way function to constitute a uniform. Bolewski only teaches an arrangement of words and symbols, namely the words BASKETBALL and FOOTBALL and HOCKEY and BASEBALL, and symbols denoting a football helmet, a hockey puck, a baseball, a baseball hat, and baseball bats. There is no teaching in Bolewski that the adornment applied to the seat cover forms the top and bottom as an identifying uniform of a member of an organization. Although it is alleged in paper no. 20060705 that the subject matter applied to the seat cover in Bolewski constitutes that top and bottom as an identifying uniform of a member of an organization, nowhere in paper no. 20060705 is it explained how the markings applied to the seat cover in Bolewski form the top and bottom as an identifying uniform. In paper no. 20060705 it is merely concluded that the markings in Bolewski

do constitute the particular type of indicia as claimed by appellant, but there is nothing stated in paper no. 20060705 that supports this conclusion. At best, Bolewski teaches a random arrangement of markings that in no way form a uniform as claimed by appellant.

Bolewski does not show a top supporting first uniform adornment, and a bottom supporting second uniform adornment, in which the first and second uniform adornments together form the top and bottom as an identifying uniform of a member of an organization. The markings applied to the seat cover in Bolewski do not function to identify the top and bottom as an identifying uniform, or a uniform top and bottom, of a member of an organization according to the claimed invention. Words and symbols indicating different sports as shown by Bolewski do not form an identifying uniform, but rather constitute something entirely different from uniform adornment applied to a top and a bottom that together identify the top and bottom as the identifying uniform top of a member of an organization.

According to the foregoing arguments, the examiner's section 103 rejection using Takamatsu and Bolewski fails, and claim 1 is not obvious over Takamatsu in view of Bolewski.

Issue #2: Whether claims 3-5 are patentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511.

Claims 3-5 stand rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511. Appellant respectfully traverses this rejection. Claims 3-5 are presented in one group by the examiner, that group of claims now on appeal being claims 3-5. None of the claims necessarily stands or falls together.

Claims 3-5

Claims 3-5 are each dependent upon a claim that is allowable according to the argument set forth above and, therefore, each of them is allowable, which renders moot the rejection of claims 3-5.

SUMMARY

Takamatsu clearly does not disclose the claimed invention and no suggested modification of Takamatsu with Bolewski can possibly achieve the structural limitations of the claimed invention, according to the argument set forth above. Accordingly, Appellant respectfully asserts that claims 1 and

3-5 are now in condition for allowance. Appellant therefore prays for the reversal of the final rejection and the allowance of the subject application.

Pursuant to the foregoing, Appellant believes that the rejection of claim 1 is supported by a faulty analysis of Takamatsu and Bolewski and is quite incorrect, and that the rejection thereof and of the corresponding dependent claims 3-5 are moot and should be withdrawn. Accordingly, any rejection not specifically addressed is not to be construed as an admission that the Examiner's position is correct or agreed upon, or that Appellant concedes the Examiner's position. Quite the contrary, each and every rejection set forth by the Examiner is believed to be based on an entirely incorrect analysis of Takamatsu and Bolewski as explained herein and are respectfully traversed.

Date: 26 March 2007

Respectfully submitted,

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CLAIMS APPENDIX A

1. Apparatus comprising:

a seat including a seat portion and an attached seat back portion;

a top, having a lower end, fitted over the seat back portion and a bottom, having a rearward end, fitted over the seat portion;

an engagement assembly carried by one of the lower end of the top and the rearward end of the bottom;

a complementary engagement assembly carried by the other of the lower end of the top and the rearward end of the bottom;

the engagement assembly detachably engaged to the complementary engagement assembly detachably engaging the lower end of the top to the rearward end of the bottom;

the top supporting first uniform adornment;

the bottom supporting second uniform adornment;

the first and second uniform adornments together forming the top and bottom as an identifying uniform of a member of an organization.

3. Apparatus of claim 1, wherein:

the seat back portion includes a lower end attached to the seat portion and an opposing upper end; and

the top includes a neck opening situated at the upper end of the seat back portion.

4. Apparatus of claim 3, wherein the top includes sleeves located on either side of the neck opening.

5. Apparatus of claim 3, wherein the top includes arm openings located on either side of the neck opening.

EVIDENCE APPENDIX B

There is no evidence submitted pursuant to 37 C.F.R.
§§1.130, 1.131, or 1.132 or any other evidence entered and
relied upon in this appeal.

RELATED PROCEEDINGS APPENDIX C

There are no copies of decisions rendered by a court or the Board in any proceeding because there are no other appeals, interferences, or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.